

EXHIBIT AA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX, JR., M.D.,
as an individual and in his
representation capacity under
Business & Professions Code
Section 17200, et seq.,
Plaintiff,

Exhibits Bound
Separately

CERTIFIED COPY

vs. Case No. C 07-2486

RUSSELL D. STANTEN, M.D., LEIGH
I.G. IVERSON, M.D., STEVEN A.
STANTEN, M.D., WILLIAM M.
ISENBERG, M.D., Ph.D., ALTA
BATES SUMMIT MEDICAL CENTER and
DOES 1 through 100,

Defendants.

-----/
CONFIDENTIAL

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
DEPOSITION OF

NEIL SMITHLINE, M.D.
SAN FRANCISCO, CALIFORNIA
February 11, 2008

REPORTED BY:
RICHARD M. RAKER, CSR NO. 3445

HANNAH KAUFMAN & ASSOCIATES, INC.

1 Q. Now, tell me a little bit about your
2 practice. What is a nephrology practice?

3 A. Well, my typical life would be spending
4 mornings in the hospital, in the intensive care unit,
5 taking care of very sick patients who had kidney
6 failure, which is a complication that follows major
7 surgery or severe infections or other adverse -- or a
8 series of adverse events that can happen.

9 And my afternoons were typically in the office
10 where I saw a mixture of nephrology patients and
11 internal medicine patients.

12 Q. And when you say "taking care" of
13 patients in the hospital, what did that involve?
14 I know it's a broad question.

15 A. It would mean evaluating them, examining them,
16 writing orders, managing their dialysis, managing their
17 multiple medications which frequently have to be
18 modified in the face of kidney problems.

19 Q. Did you ever perform surgery?

20 A. I've done closed-needle biopsies, but never
21 open surgery.

22 Q. I think I know, but what is a
23 closed-needle biopsy?

24 A. Well, it's a procedure on kidneys or livers
25 where you put a needle in through the skin, and you --

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1 it has a cutting edge and it takes out a little piece
2 of tissue.

3 Q. But you've never had -- you've never
4 performed surgery where you've had to make an
5 incision?

6 A. Not on -- well, in medical school I did, but
7 not when I was in practice.

8 Q. What background, if any, do you have in
9 cardiac surgery?

10 A. Well, my background, I guess, in cardiac
11 surgery is certainly not in the operating room, but I
12 would say around several aspects.

13 One, evaluating indications for cardiac
14 surgery, and secondly, because we've done lots of case
15 reviews around cardiac surgery over the years, I guess
16 you would call it on-the-job training from having had
17 many discussions with cardiac surgeons about what
18 constitutes proper care and what are issues that may or
19 may not constitute proper care.

20 Q. Let me go back to something. You said
21 among the things that you had been doing at the
22 same time you were a nephrologist was you said you
23 were the president of an IPA.

24 A. Yes.

25 Q. What did you mean by that?

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1 A. Well, an IPA is an independent physician's
2 association, and at the time -- this was the early '80s
3 when HMOs were just beginning to play a role in
4 healthcare in the United States -- the requirements
5 were you needed a physician corporation to contract
6 with the HMOs to provide care, and so a group of us set
7 up an IPA, and at that time, I was the president of it.

8 Q. The on-the-job training you were
9 referring to in cardiac surgery, the job that you
10 were involved in at that time was as an outside
11 reviewer?

12 A. Yes.

13 Q. Okay. Let's go back to when you were
14 practicing medicine. What experience, if any, did
15 you have with cardiac surgery?

16 A. Well, I would take care of a lot of
17 postoperative cardiac surgery cases if they had kidney
18 problems, and the surgeons in our institution, some of
19 them, at least, were not particularly fond of
20 postoperative care, so a lot of that would end up in my
21 lap or my partners' laps.

22 Q. Have you ever been in an operating room
23 during a cardiac surgery procedure?

24 A. No.

25 Q. What training, if any, have you ever

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1 received in cardiac surgery?

2 MR. VANDALL: Objection; vague.

3 THE WITNESS: Am I supposed to answer?

4 MR. VANDALL: (Nods head.)

5 THE WITNESS: What I described before.

6 BY MR. EMBLIDGE:

7 Q. Okay. Apart from the -- what you called
8 on-the-job training --

9 A. Right.

10 Q. -- as an outside consultant, have you had
11 any training in cardiac surgery?

12 MR. VANDALL: Objection; vague.

13 THE WITNESS: Well, in medical school I had
14 some rotations through surgery where cardiac surgery
15 was part of that, yes.

16 BY MR. EMBLIDGE:

17 Q. Since medical school and before becoming
18 an outside consultant, did you have any training
19 in cardiac surgery?

20 A. No.

21 Q. What about cardiology? Any training in
22 cardiology since medical school?

23 A. Yes.

24 Q. What?

25 A. Well, my residency there was a large part of

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1 A. Sometimes it's a medical group, but most of
2 the time it's a hospital.

3 Q. What percentage of time is it a medical
4 group?

5 A. Ten.

6 Q. Do you ever do work on behalf of an
7 individual physician who's under scrutiny by a
8 hospital?

9 A. We would, just -- well, I don't think anyone
10 has requested us to do that.

11 Q. So you've never done that?

12 A. Correct.

13 Q. Have you ever done any work for Summit
14 Hospital before Dr. Ennix?

15 A. Yes.

16 MR. VANDALL: Objection.

17 BY MR. EMBLIDGE:

18 Q. How many -- do you call them cases
19 or --

20 A. Well, I think it was one physician.

21 Q. Okay. So you call it an assignment or a
22 case or a matter, or what do you --

23 A. Engagement --

24 Q. Engagement.

25 A. -- I guess.

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1 anesthesiologist who has specific training, et cetera.

2 So it's really on a case-by-case basis based
3 on the nature of the practice, the type of cases we
4 get.

5 Q. And are there cases like this one where
6 sort of midstream you decide you need some
7 additional specialty input?

8 A. I think -- excuse me. When we run up against
9 a question we can't answer and there is conflicting
10 opinions, then absolutely we'll try and bring in an
11 additional reviewer to answer -- you know, let's get a
12 third pair of eyes on -- you know, we're talking about
13 this -- I suspect -- you're saying this case may --
14 around Dr. Ennix cases where I believe we brought in an
15 extra cardiologist to review some of the angiograms.

16 Q. In the report-writing process, what role
17 do you play personally?

18 A. I do most of the drafting, and then when it
19 gets to be in pretty good shape, it gets peer-reviewed
20 internally by other people at Mercer.

21 Q. And the individual reviewers, they fill
22 out worksheets, correct?

23 A. Yes.

24 Q. And sometimes do you cut and paste the
25 prose from the worksheets right into the review?

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1 A. Typically I'll start that way.

2 Q. And then you'll adjust that language to
3 make it more grammatically readable. Is that
4 fair?

5 A. Yes. And also -- for several years --

6 Q. What are those?

7 A. One is that often the people reading this are
8 not of the same specialty.

9 So that in the case of a cardiac case, the --
10 if it's in a fair hearing process at the hospital, it
11 may be an orthopedic surgeon and an obstetrician,
12 et cetera. So trying to put the language and explain
13 things that would not -- that would be obvious to
14 another cardiac surgeon but not obvious, perhaps, to an
15 obstetrician or an internist or a family practitioner.

16 And also in that process, it gets -- the
17 language gets adjusted based on the phone calls and
18 emails back and forth with the reviewers.

19 Q. What role do others in the process play
20 in the writing of the final report?

21 A. Well, Suzanne and Jennifer do a lot of fact
22 checking. Suzanne probably more so will go back -- you
23 know, there were issues, and I guess in this particular
24 case there was one case where there is a question of
25 timing after surgery and what happened at 7:30 and at

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AFTERNOON SESSION

(Exhibit No. 1301 was marked for identification by the reporter.)

MR. EMBLIDGE: Back on the record.

Q. Dr. Smithline, I've handed you what's been marked as Exhibit 1301. Do you recognize this document?

A. Yes.

Q. So let's start with the beginning. Does this indicate that the first contact you had regarding Dr. Ennix was the phone call from Dr. Isenberg and Mr. Shulman on December 22, 2004?

A. Let me take a look here. I believe it is. Yes.

Q. And are these notes that you took?

A. Yes.

Q. Tell me how that works. Do you keep a running journal or something as a Word document on your computer or --

A. Sometimes frequently when I -- a new client will start up, rather than keeping notes on a yellow pad or -- I'll do them on a computer.

Q. And so is this a computer -- do you have a home office, or do you work out -- do you have

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1 there.

2 Q. And so to see if there is a pattern
3 there, wouldn't you want to look at a random
4 sample of cases rather than a biased selection?

5 A. We would want to look at a random selection to
6 see if there is a problem. We'd want to look at the
7 cases that fell out to see if, in these cases that
8 appear to have bad outcomes, is there a contributory
9 pattern of care.

10 Q. You had no input into which cases were
11 selected to send to you, correct?

12 A. Yes. That's correct.

13 Q. Now, the STS is the Society of Thoracic
14 Surgeons, right?

15 A. Yes.

16 MR. EMBLIDGE: Off the record for a second.

17 (Counsel went off the record.)

18 BY MR. EMBLIDGE:

19 Q. The STS data, that is data compiled in
20 large volume and statistically analyzed, correct?

21 A. Yes.

22 Q. Is that similar to the CCORP data that's
23 compiled in California?

24 A. It goes into much more depth and asks many
25 more specific questions.

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1 Q. Well, the CCORP data is really to CABG
2 mortality, right?

3 A. Yes.

4 Q. And that is data that one would look at
5 to see if one was falling out.

6 A. Yes.

7 Q. Okay. So -- where were we?

8 After you got this letter, referring to
9 Exhibit 1303 --

10 A. Yes.

11 Q. -- did this letter go to anyone on your
12 team other than you?

13 A. I'm sure it went to Suzanne and Jennifer.

14 Q. And what about to the reviewers?

15 A. I don't recall.

16 Q. Would that be typical?

17 A. What would be typical would be we would
18 transmit to them the -- either verbally or in writing
19 the kinds of issues that were raised here.

20 Q. Okay. So the concerns raised in
21 Exhibit 1303, you conveyed those concerns to the
22 reviewers either in writing or over the phone?

23 A. Well, let me look and see. Sometimes we're
24 asked to convey them, sometimes we're asked not to
25 convey them. Yes. "Please provide a copy of this

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1 A. Only that sometimes they are in these kind of
2 instances.

3 Q. Okay. Could you go to the next page,
4 please.

5 A. (Witness complies.)

6 Q. Under "Timeframe," it says you will
7 mutually determine the time frame. Do you recall
8 if at any point you did? I mean, was there a
9 deadline set, a deadline requested?

10 A. I don't recall.

11 Q. And the hourly rates on this page, those
12 are the hourly rates that you agreed to charge the
13 hospital, correct?

14 A. Well, to the best of my knowledge. As I say,
15 Jennifer Herman takes care of those kinds of issues.
16 But given that they're in the contract, I would say
17 yes, those are the ones that were mutually agreed on.

18 MR. EMBLIDGE: As 1305, let's mark a January
19 17th email.

20 (Exhibit No. 1305 was marked for
21 identification by the reporter.)

22 BY MR. EMBLIDGE:

23 Q. This is an email that appears to be from
24 Dr. Isenberg to you, Dr. Smithline. And it
25 says -- I'm sorry -- from you to Dr. Isenberg --

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1 that says, "One of your notes mentions STS data,
2 but we have not received that yet."

3 My first question is, what does that mean,
4 "one of his notes"? Did he send you notes, or how did
5 you get notes from Dr. Isenberg?

6 A. Well, it may be I was referring to my notes
7 here from that that you showed me before from the
8 December 22nd call. And I don't recall specifically if
9 he had sent a note or if in this letter -- where is
10 that letter that I looked at a few minutes ago?

11 Q. Right there.

12 A. This one -- he mentioned the STS data. "Is
13 this table perhaps from the STS data?" "Yes." So I
14 don't know if he meant -- I guess I was asking is there
15 anything beyond this that he was referring to that he
16 planned to say.

17 Q. Why would you want something beyond that?

18 A. Well, because we were asked to evaluate a
19 practitioner, and if there was more data, we'd want to
20 take a look at it.

21 Q. The more data, the better able you are to
22 make conclusions, correct?

23 A. Yes.

24 Q. Did you receive any STS data other than
25 that one page attached to the January 4th letter,

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1 as best you can recall?

2 A. Not that I recall.

3 Q. Did Dr. Isenberg send you notes in any
4 way?

5 A. Like emails. I don't -- you know, whatever is
6 in the email trail.

7 Q. Okay. So did you receive -- I'm still
8 curious about that sentence that says "one of your
9 notes." Did you receive information from
10 Dr. Isenberg other than in your phone
11 conversations with him or in emails that he sent
12 you?

13 A. No. Well, there were letters, you know, like
14 this letter.

15 MR. VANDALL: While you mark that exhibit, I'm
16 going to run to the restroom, if that's okay.

17 (Exhibit No. 1306 was marked for
18 identification by the reporter.)

19 BY MR. EMBLIDGE:

20 Q. I've shown to you what we've marked as
21 1306. It's a January 18th fax cover sheet. This
22 appears to be the same data that you received with
23 the cover letter on -- but I guess you've already
24 answered my question. This is all you remember
25 receiving as far as STS data; is that right?

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1 was it read properly, those kinds of things.

2 Q. In the next paragraph, it says, "Mercer
3 would like a pretty fast turn around."

4 Given that this is in February and you haven't
5 talked to Dr. Ennix yet and that your final report
6 wasn't produced until May, what was the need for a fast
7 turnaround at this point?

8 A. Well, I don't remember specifically, but --
9 but typically where we're trying to get these reports
10 out as quickly as we can to the hospital. And I think
11 a large part of -- I think that last month was
12 scheduling the calls with Dr. Ennix and setting up
13 those dates. And as I mentioned, we had to reschedule
14 one or maybe two. I don't recall. And -- so, you
15 know, our goal was to get them turned around quickly.

16 Q. You don't remember any particular time
17 constraint at the end of February; is that
18 correct?

19 A. I do not.

20 MR. EMBLIDGE: As 1313, a February 24th email.
21 (Exhibit No. 1313 was marked for
22 identification by the reporter.)

23 BY MR. EMBLIDGE:

24 Q. Who is Christy Moynihan?

25 A. She is a health services researcher, slash,

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1 statistician person we work with.

2 Q. And so you've worked with her -- you had
3 worked with her frequently prior to this Ennix
4 report?

5 A. I would not say frequently, but maybe on two
6 or three occasions.

7 Q. And what kind of assignments had she had
8 on those other occasions?

9 A. I don't recall. You know, where we needed
10 statistical support or analysis.

11 Q. That's what I was getting at. She's
12 someone you hired for statistical analysis?

13 A. Yes.

14 Q. And why did you conclude that you needed
15 statistical analysis in the Ennix matter?

16 A. Well, I might -- my recollection is not great,
17 but by looking at this email, I think we wanted someone
18 else to take a look at the work Dr. Barkin had done to
19 see if another statistician would agree with the
20 methods and/or conclusions.

21 Q. Okay. It says in the second paragraph,
22 at the end, that you're interested in her thoughts
23 on Ennix versus STS data. What does that mean?
24 The "versus" thing, what does that mean?

25 A. How does he compare to the STS database. Does

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1 he fall outside their norm.

2 Q. So you want to know whether he falls out
3 of the statewide average.

4 A. Well, I don't know if it's statewide, but
5 whatever competitors STS uses for like hospitals, like
6 size, and they have different ways they slice it.

7 Q. Did you ever talk to Christy Moynihan
8 about the Ennix matter?

9 A. My guess is I did.

10 Q. Do you recall any discussion with her?

11 A. No.

12 Q. Do you recall any report from her?

13 A. No.

14 Q. It says in the third paragraph here that
15 "If you," meaning Chris Moynihan, "need any other
16 STS data, we can request it from the facility."

17 Do you recall doing that or do you recall your
18 staff doing that?

19 A. I do not.

20 Q. Do you recall incorporating any work she
21 did into your final report?

22 A. I don't believe we did.

23 Q. It says she is associated -- well, have
24 you ever heard of a company called CM Research
25 Associates?

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1 staff. Do you agree?" And Harry probably -- looks
2 like said yes.

3 And so when I got a correspondence directly
4 from Dr. Ennix, based on that conversation, I wanted to
5 let Bill know that he thought and I thought it was
6 probably better to have everything go through the
7 medical staff.

8 Q. Could you go back to Exhibit 1301,
9 please.

10 A. Yes.

11 Q. So the top part of this reflects a
12 conversation. Let's see if we can put that in
13 context. Put it together with 1322.

14 A. Okay.

15 Q. It looks like this is a conversation you
16 had with Dr. Isenberg and Mr. Shulman on
17 February 23rd --

18 A. Yes.

19 Q. -- correct?

20 A. Yes.

21 Q. Okay. And so on February 23rd, you knew
22 that Dr. Ennix wanted to talk to the reviewers,
23 right?

24 A. Yes.

25 Q. And you say here, "Harry wants to avoid

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1 learning what he would say for the first time at a
2 fair hearing." Does that mean that Mr. Shulman
3 told you that one of the reasons he was in favor
4 of Dr. Ennix talking to the reviewers is so that
5 he would have a preview of what Dr. Ennix's
6 defense would be at a fair hearing?

7 A. I would say that was one of the three purposes
8 stated in that paragraph.

9 Q. And that's one of them?

10 A. And that's one of them.

11 Q. Have you ever had a situation like this
12 come up before where the lawyer for a hospital
13 says, Let's go ahead and have the physician being
14 examined talk to the reviewers so I can get a
15 preview in case this goes to a fair hearing?

16 MR. VANDALL: Objection; misstates the
17 document.

18 BY MR. EMBLIDGE:

19 Q. Has that ever happened before?

20 MR. VANDALL: Objection; incomplete
21 hypothetical.

22 THE WITNESS: I don't know.

23 BY MR. EMBLIDGE:

24 Q. And do you think that's a legitimate role
25 for you and your company to play in the peer

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1 A. Right. Beginning to write the report and
2 calls.

3 Q. With Shulman and Isenberg, right?

4 A. Right.

5 Q. And then the next day, you had a call,
6 which it says "client," comma, "attorney." Is
7 that again Isenberg and Shulman?

8 A. Yes.

9 Q. And then on the 25th, you had another
10 call with Isenberg and Shulman, right?

11 A. Yes.

12 Q. Why all the calls?

13 A. Well, I think it's the information that we've
14 kind of talked about and went through. Part of it may
15 have been we needed additional information. Some of it
16 may have been those -- weren't there emails around that
17 time about beginning to have a call with Dr. Ennix?

18 Q. Well, rather than speculating, what do
19 you recall about those phone calls? Anything?

20 A. Nothing specific other than the issues we
21 discussed this afternoon.

22 Q. So you began writing the report on
23 February 22nd?

24 A. Yes.

25 Q. Okay. And this month -- well, the month

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1 of February, you put in about 28 hours. Your
2 reviewers put in about 11 hours, right?

3 A. Yes.

4 Q. And if you look on the next page, Suzanne
5 put in over 32 hours, right?

6 A. Right.

7 MR. EMBLIDGE: Let's take a break.

8 (A break was taken.)

9 (Exhibit No. 1332 was marked for
10 identification by the reporter.)

11 BY MR. EMBLIDGE:

12 Q. Okay. Taking a look at the next invoice,
13 the April invoice for the March work, which has
14 been marked as 1332, you spent over 53 hours in
15 the case in March, right?

16 A. Yes.

17 Q. And your specialty reviewers continued to
18 work. They put in about fifteen and a half hours
19 that month.

20 A. Yes.

21 Q. It looks like, according to their entries
22 here, that they continued to review charts and
23 fill out the online worksheets. Right?

24 A. Yes.

25 Q. Now, under Ms. McCluney, it says that she

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1 Mr. Shulman?

2 A. Let me see. I don't find that entry. Oh,
3 yes. Call with an attorney. Got it.

4 Q. You talked to Mr. Shulman again that day,
5 right?

6 A. Yes.

7 Q. Now, it says 3.9 hours. Now, 3.9 hours
8 was comprised of talking to Mr. Shulman and
9 completing your notes from the Ennix phone call?

10 A. Yes.

11 Q. Can you tell me, as you sit here today,
12 about how long each of those tests took.

13 A. Probably almost all. It was completing the
14 notes from the phone call to Dr. Ennix.

15 Q. Do you recall that?

16 A. No, but that would -- that would be my
17 experience.

18 MR. EMBLIDGE: Let's mark the May invoice as
19 1333.

20 (Exhibit No. 1333 was marked for
21 identification by the reporter.)

22 BY MR. EMBLIDGE:

23 Q. Okay. This is an invoice for the time
24 you spent in April, right?

25 A. Yes, it is.

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1 Q. And you were all the way in April, and
2 you spent about 28 hours that month on this
3 report, right?

4 A. Yes.

5 Q. And your specialist reviewers were still
6 doing work?

7 A. Um-hmm.

8 Q. You've got to say yes or no.

9 A. Yes.

10 Q. And you have an entry here that says
11 "call with client" for April 13th?

12 A. April 13th? "Call with client." Yes.

13 Q. In the way you make these reports, would
14 that be Mr. Shulman or Dr. Isenberg?

15 A. It would be Dr. Isenberg.

16 MR. EMBLIDGE: Now, let's go to the June
17 invoice, which we'll mark as 1334.

18 (Exhibit No. 1334 was marked for
19 identification by the reporter.)

20 BY MR. EMBLIDGE:

21 Q. So this is for time you put in in May,
22 and you put in about six hours working on tests
23 relating to the final report, correct?

24 A. Yes.

25 Q. And while revising your report, you had

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1 A. No. No. So, for instance, on the overall
2 rating on this case, the deficiencies in care, they
3 said led to permanent harm.

4 Q. So -- but here's my point. The words,
5 "This is a case of poor judgment that led to
6 death," those are your words, right?

7 A. Those are words that came from this --
8 numerous discussions with the reviewers.

9 Q. If I combed through these documents, will
10 I find those words -- the phrase, "This is a case
11 of poor judgment leading to death"?

12 A. I don't know.

13 Q. But you felt that was a fair summary of
14 what you had gotten from the reviewers?

15 A. Yes.

16 Q. And so all these headings here on this
17 first page, that's something you drafted?

18 A. I draft the reports. Absolutely.

19 Q. Okay. Let's go to page 4. Under
20 "Introduction," the beginning of the second line,
21 it says, "Peer review at the hospital had
22 identified problems in all of the cases."

23 A. Yes.

24 Q. On what did you base that statement?
25 You're talking about all ten cases.

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1 THE WITNESS: That is the same case.

2 (Exhibit No. 1344 was marked for
3 identification by the reporter.)

4 BY MR. EMBLIDGE:

5 Q. Okay. Now, this is -- if you look at the
6 bottom of this document, it's got a footer with a
7 date.

8 A. Yes.

9 Q. Was it the convention to put the date of
10 a draft in the footer?

11 A. Sometimes. We have several different
12 conventions we've used over the years. We're keeping
13 track with different drafts because we have multiple
14 drafts and we want to avoid getting into divergent
15 control issues. So I think at this time that was a
16 convention we were using.

17 Q. So it's safe to assume that this is a
18 draft that you produced on or about February 17,
19 2005?

20 A. Yes.

21 Q. And you already have in here the heading
22 "Four Causes of Poor Judgment Leading to
23 Complications or Death." Do you see that?

24 A. Yes.

25 Q. Why were you comfortable in reaching the

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1 March 16th.

2 A. Yes.

3 Q. Is that the only reason you can think of
4 for why you left this paragraph in and, in fact,
5 edited it?

6 A. Probably. You know, sometimes, when we're
7 editing a document, we're editing cases 1 through 5 and
8 we don't even look at the others. So it may be two
9 weeks more before we get back to look at the other part
10 of the document.

11 Q. So -- I'm sorry -- if you look at
12 Exhibit 1345 and -46 and -47 --

13 A. Yes.

14 Q. -- you had your calls with Dr. Ennix at
15 the end of March, about the 19th and the 26th?

16 A. Right.

17 Q. If you look at 1345. That is dated
18 March 16th.

19 A. Okay.

20 Q. I want to make sure we got that, 1345.

21 A. Yes, I do. It's March 16th.

22 Q. So that was before you had the calls with
23 Dr. Ennix?

24 A. Right.

25 Q. Could you go to the last page.

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1 A. Of which one now?

2 Q. 1345.

3 A. Yes.

4 Q. You see right above where it says

5 "four-side letter"? There is a sentence that

6 says, "If these pattens of care go uncorrected, it

7 is likely there will be future patient harm."

8 A. Yes.

9 Q. That's something you wrote?

10 A. Yes.

11 Q. And is that a conclusion that anyone put

12 in writing, either the cardiac surgeon reviewers

13 or the cardiologist reviewers?

14 A. I doubt it.

15 Q. Given that you had not yet had any input

16 from Dr. Ennix, why did you feel comfortable

17 writing such a damning conclusion?

18 MR. VANDALL: Objection; argumentative.

19 THE WITNESS: These were the conclusions based

20 on the information we had at the time.

21 BY MR. EMBLIDGE:

22 Q. And you felt comfortable putting in

23 writing that Dr. Ennix was likely to cause future

24 patient harm even though you hadn't heard from him

25 yet?

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1 A. This was a draft that was based on the
2 information that we had, and we go through these and
3 change them as need be. But at that point, that was
4 the conclusion.

5 Q. Now, when you were preparing the final
6 report, you sent a draft to Dr. Isenberg and
7 Mr. Shulman to review, right?

8 A. Yes.

9 Q. And I think you already said that was to
10 either correct language errors or make it more
11 clear if they didn't understand what the findings
12 were or to correct any technical mistakes that
13 they might catch as far as the hospital is
14 concerned. Right?

15 A. Yes.

16 Q. But not to make substantive changes.

17 A. Yes.

18 Q. But they did make a substantive change,
19 didn't they?

20 A. Not that I recall.

21 Q. Well, they -- Dr. Isenberg asked you to
22 add to the report a line explaining that not only
23 could Dr. Ennix be criticized for what you pointed
24 out but he could also be criticized with failing
25 to comply with the hospitals rules and

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1 regulations. Do you recall that?

2 A. Is there -- do you have something that would
3 refresh my memory?

4 Q. So you don't recall it?

5 A. No, but --

6 MR. EMBLIDGE: Let's mark as 1348 NMA
7 Document 836.

8 (Exhibit No. 1348 was marked for
9 identification by the reporter.)

10 THE WITNESS: I think this had to do, as I
11 recall, with the late operative reports.

12 BY MR. EMBLIDGE:

13 Q. Do you recall it now?

14 A. Obviously, there was a communication about
15 that.

16 Q. And in the communication, you got back to
17 the lawyer and said in a redline, What
18 Dr. Isenberg wants me to insert really wouldn't be
19 appropriate because it goes beyond clarification
20 and adds a substantive observation. Right?

21 A. Well, I think we said we don't have the rules
22 and regs of the hospital so that we couldn't comment on
23 those.

24 Q. Of course, it wasn't your own
25 observation. You hadn't concluded that there was

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1 a violation of the rules and regs, right?

2 A. Well --

3 Q. You're looking at the report now to see
4 if, in fact, you did include that in the final
5 report.

6 A. We did, yes. And at some point, it looks
7 like -- let me just read this for a second -- that
8 Dr. Ennix provided us with those rules and regulations.
9 And I don't remember why that comment is in there
10 except that -- in any event, we would have certainly
11 quoted the last line, which you know the joint
12 commission standard dictated immediately, or worst-case
13 scenario, within 24 hours, and signed within two weeks.

14 Q. The point is, you went ahead and included
15 in your final report the substantive observation
16 that Dr. Isenberg communicated to you in a redline
17 of the report, right?

18 A. Yes.

19 Q. Okay. Now, just a couple more questions,
20 and I think you can actually believe that.

21 Let me just show you, without marking it, NMA
22 5654. You can tell me if that's your handwriting.

23 A. I don't think so. Some of it is.

24 Q. And let's just look at 5823. That's your
25 handwriting, right?

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REPORTER'S CERTIFICATE

I, RICHARD M. RAKER, CSR #3445, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which
time the witness was put under oath by me;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed;

That the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any attorney or of any of the parties,
nor financially interested in the action.

I declare under penalty of perjury under the laws
of the State of California that the foregoing is true
and correct.

Dated this 14th day of February, 2008.



RICHARD M. RAKER, C.S.R. No. 3445